



June 22, 2021

The Honorable Jerrold Nadler  
Chairman  
2141 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Jim Jordan  
Ranking Member  
2141 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Nadler and Ranking Member Jordan:

The Electronic Frontier Foundation (EFF) supports the Committee's bold, bipartisan effort to address the harms caused by massively large internet platforms. The interoperability, non-discrimination, structural separation, and other requirements the Committee proposes to place on Big Tech will both restore competition and empower users. We urge the Committee to move forward with these bills without delay.

EFF is the leading nonprofit organization defending civil liberties in the digital world. With over 30,000 dues-paying members and well over 1 million followers on social networks, we focus on promoting policies that benefit both creators and users of technology. EFF was founded on the premise that as our use of technology grows, our rights and freedoms should grow. Technology should enhance our rights, not erode them.

In 2018, a year prior to the launch of the Committee's bipartisan antitrust investigation, EFF concluded that "too many widely relied-upon functions are now controlled by a few giant companies."<sup>1</sup> That consolidation has centralized and limited the internet's potential to be a source of innovation, growth, and freedom. From the beginning, EFF has supported the Committee's investigation of competition in the technology sector. Without reservation, we support the Committee's efforts to pass several legislative proposals that address this problem.

The consolidation of hundreds of verticals into Big Tech, the enormous market power derived from the network effects of existing incumbents, the emergence of a "kill zone" for startups that compete with Big Tech, and other issues stemming from Big Tech's dominance have been well documented and thoroughly studied by both independent analysts and Congress. Arguments that the committee should take additional time to discuss whether or not the problem exists are in bad faith. They are merely efforts to prevent progress entirely. If we wish to return power and control over the internet to end users and the startups they launch, Congress must move forward to begin establishing a framework of competition policy for the technology sector. The committee legislative package, taken as a whole, charts the right course.

Requiring interoperability as envisioned by the ACCESS Act will fix the core problem users have with today's dominant platforms: the inability to leave a platform while remaining in contact with their personal networks. The difficulty of leaving today's dominant platforms means that those platforms have inadequate incentives to safeguard consumer privacy and freedom of

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<sup>1</sup> Mitch Stoltz, Corynne McSherry, Cindy Cohn, & Danny O'Brien, *Competition, Civil Liberties, and the Internet Giants*, DEEPLINKS BLOG (Jun. 27, 2018), available at <https://www.eff.org/deeplinks/2018/06/competition-civil-liberties-and-internet-giants>.



expression. By breaking down the power of network effects, Congress will enable new markets, products, and services to emerge within the ecosystems where a supermajority of internet users currently reside. The ACCESS Act gives consumers meaningful ways to vote with their feet should they disagree with a Big Tech platform's decision on how to deliver their service.

Opposition to this reform appears to be focused primarily on privacy and security, but both of these issues are already addressed by the legislation before the Committee. On security, the ACCESS Act provides an unambiguous exemption for a covered platform to make changes necessary to protect "security vulnerabilities" that create an "imminent risk to user privacy or security" without requiring approval from the Federal Trade Commission (FTC). Under no circumstances does the ACCESS Act prevent a Big Tech platform from taking steps that are genuinely necessary to secure their product or service. On privacy, the legislation empowers the FTC to establish baseline privacy rules to protect user data that is sent through interoperability interfaces. The Act also adopts forward thinking data minimization requirements, which are smart advancements over current federal user privacy laws. An important follow-on step by Congress will be the establishment of a private right of action to enforce user privacy, which would augment the FTC's rules by returning power to individuals over their personal information. But it would be categorically false to assert that user privacy would worsen under the legislation given the requirements to safeguard privacy and the remedies included for lack of compliance.

The rest of the legislative package seeks to address many of the competition harms the Committee has identified in its investigation and represent traditional measures found in antitrust and other areas of the law. There is nothing radical about structural separation, tightening merger standards, and non-discrimination policies being applied to powerful incumbent industries. EFF has never been shy to inform Congress that it was contemplating measures that would actively harm the technology sector to the detriment of end users. And while no legislation is perfect, the proposed package moves our laws in the correct direction of reinvigorating competition by regulating the power of Big Tech and allowing alternative technologies and platforms to take root.

The internet ecosystem must not continue to be controlled by a few private hands or it will lose its ability to be a force for decentralized power. The fearmongering about breaking the internet with competition policy is disingenuous, because Big Tech is not the internet. The strength of the internet as an economic engine that empowers individuals comes from being an open platform for all ideas where no gatekeeper has the power to dictate our collective future. Today's monopolists have acquired an unassailable position of power that must be remedied with law. Congress has the power to chart a new course, as it has in the past, and reshape the market to be more competitive. We urge the Committee to move forward to deliver that future.

Sincerely,

Electronic Frontier Foundation